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APR 21 2005

OFFICE OF PETITIONS

In re Application of	:	
James F. Smith et al.	:	
Application No. 09/835,790	:	DECISION ON PETITIONS
Filed: April 16, 2001	:	UNDER 37 C.F.R. §§ 1.181 and 1.137(a)
Attorney Docket Number: 1044-AW	:	
Title: ONE-WAY PNEUMATIC DELIVERY	:	
SYSTEM	:	

This is a decision on the petitions under 37 C.F.R. §§1.181 and 1.137(a)¹, filed August 13, 2004, to withdraw the holding of abandonment and to revive the above-identified application, respectively.

On June 4, 2003, a Notice of Allowability and Issue Fee due was mailed. The issue and publication fees were received on June 16, 2003. On July 1, 2003, a Notice was mailed which indicated that a Change of Power of Attorney had been received on May 5, 2003². This notice was mailed to both the address of record and the Petitioner at the former address of record.

The above-identified application became abandoned for failure to reply in a timely manner to the "Notice of Drawing Inconsistency with Specification," mailed July 17, 2003 to the address of record, which set a one-month period for response. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 It is noted that a copy of this Change of Power of Attorney has not been located in the electronic file. It is further noted that it does not appear that Petitioner took any further action after receiving the communication of July 1, 2003 until performing the online status inquiry around the time this petition was prepared.

identified application became abandoned on August 18, 2003. A Notice of Abandonment was mailed October 2, 2003.

A copy of the notice mailed on July 17, 2003 has been included with this decision.

With the instant petition, Petitioner has submitted a statement that he has not received the communication of July 17, 2003.

The petition under 37 C.F.R. §1.181:

Petitioner's attestation that he failed to receive this communication fails to establish non-receipt of the same, in that it has not been accompanied by an attestation to the fact that a search of the file jacket and docket records indicates that the Office communication was not received, and that he has searched the place where he normally would keep such communications and could not find it³. Furthermore, petitioner has failed to supply a copy of the docket report where the non-received Office communication would have been entered had it been received and docketed. A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period, in order to establish that the correspondence at issue was not received, and merely misplaced and filed with another file.

As such, the petition under 37 C.F.R. §1.181 to withdraw the holding of abandonment is **DISMISSED**.

The petition under 37 C.F.R. §1.137(a):

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that the delay was "unavoidable."

Accordingly, the petition under 37 C.F.R. §1.137(a) is **GRANTED**.

After this decision is mailed, the application will be forwarded to Technology Center 3600 for re-mailing of the notice of July 17, 2003.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

³ See MPEP 711.03(c).

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



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